

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL L. KATHREIN and
VICTORIA KATHREIN, on behalf of
herself and all others similarly
situated,

Plaintiffs,

vs.

CITY OF EVANSTON, ILLINOIS,
et al.,

Defendants.

No. 08 C 83

Chicago, Illinois
April 29, 2008
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff
Victoria Kathrein:

COLLINS & BARGIONE
BY: MR. JAMES J. LESSMEISTER
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For the Defendants:

HOLLAND & KNIGHT LLP
BY: MR. JACK M. SIEGEL
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Court Reporter:

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Official Court Reporter
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Chicago, Illinois 60604
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EXHIBIT _____

1 (Proceedings in open court:)

2 THE CLERK: 08 C 83, Kathrein v. City of Evanston.

3 MR. SIEGEL: Good morning, your Honor. Jack Siegel
4 for the City of Evanston and the named defendants.

5 MR. LESSMEISTER: Good morning, your Honor. Jim
6 Lessmeister on behalf of plaintiff Victoria Kathrein.

7 THE COURT: Good morning.

8 MR. LESSMEISTER: Your Honor, we're here today on our
9 motion to present our motion for class certification and also
10 my second motion to file an amended and substituted memorandum
11 in support of our motion for class certification.

12 When I had first filed the memorandum, I noticed that
13 I had inadvertently left off the affidavit of Victoria
14 Kathrein. And then I made reference that an attorney in our
15 office, Adrian Vuckovich, would file an affidavit. That's not
16 the case. We have in our amended and substituted motion the
17 affidavit of Victoria Kathrein. I corrected some grammatical
18 errors and changed a footnote. But that's essentially what
19 the amended and substitution memorandum is about.

20 MR. SIEGEL: Your Honor, obviously we don't object to
21 his filing. But as your Honor is aware, we have filed a
22 motion to dismiss on jurisdictional grounds; and we have a
23 briefing schedule. I think they're due on May 5th and
24 we're -- we reply on the 19th. We would like to wait until
25 your Honor has ruled on that motion before we respond to the

1 matter which is filed today.

2 THE COURT: Well, which brings up, I think, the
3 issue, which is, should we do that or should we do it the
4 other way around. Why would you not want your motion to
5 dismiss to knock out an entire class rather than one
6 plaintiff?

7 MR. SIEGEL: I'm sorry, your Honor?

8 THE COURT: Why would -- wouldn't you rather have
9 your motion to dismiss, if it's successful, knock out an
10 entire class rather than simply one named plaintiff or two?

11 MR. SIEGEL: Well, we think --

12 THE COURT: Hard to say no to that, isn't it?

13 MR. SIEGEL: Well, your Honor, we think this case
14 belongs in the state court if it belongs anywhere.

15 THE COURT: Different issue, not before me now. What
16 I have to do now is decide do I take time to rule on this
17 motion to dismiss, which, if it's granted, relieves you of the
18 burden of the lawsuit filed by these named plaintiffs but does
19 not relieve you of lawsuits to be filed by subsequent
20 plaintiffs in the same shoes, which could, for example, be
21 filed in state court.

22 MR. SIEGEL: I think --

23 THE COURT: Then you're stuck trying to plead, I
24 don't know what, issue preclusion.

25 MR. SIEGEL: Okay.

1 THE COURT: Whereas, if we put your motion to dismiss
2 on hold and certify a class first and then allow you to file a
3 motion to dismiss and we rule in your favor, you're done.
4 It's over; here, downstate Illinois, nowhere, nowhere can such
5 a motion be filed or a new complaint be filed. That's what I
6 think the Seventh Circuit had in mind when it told us that we
7 ought to try, wherever practical, to address class
8 certification issues first and define the class before we move
9 on to substantive matters.

10 MR. SIEGEL: All right. Well, then obviously we need
11 a schedule in which to respond to this motion, your Honor.

12 THE COURT: I think that what would be most
13 appropriate here would be to strike the motion to dismiss
14 without prejudice and move ahead on a briefing schedule on the
15 motion for class certification. Let's do that issue first.
16 And after we get done with that, we can move on to your
17 assertion with respect to -- it's a lack of jurisdiction, I
18 believe, motion; is it not? Yes.

19 Okay. How much time do you wish to respond to the
20 motion?

21 MR. SIEGEL: 21 days, your Honor.

22 THE COURT: Carolé.

23 THE CLERK: May 20th.

24 THE COURT: Reply.

25 MR. LESSMEISTER: 14, your Honor. Is that okay?

1 THE COURT: 14, Carole.

2 THE CLERK: June 3rd.

3 THE COURT: Okay. We will rule by mail, folks. And
4 then we'll call you in and commence with the rest of the
5 litigation after we've ruled.

6 MR. LESSMEISTER: Thank you, your Honor.

7 MR. SIEGEL: Thank you, your Honor.

8 (which were all the proceedings heard.)

9 C E R T I F I C A T E

10 I, Nancy C. LaBella, do hereby certify that the
11 foregoing is a complete, true, and accurate transcript of the
12 proceedings had in the above-entitled case before the
13 Honorable RONALD A. GUZMAN, Judge of said Court, at Chicago,
14 Illinois, on April 29, 2008.

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Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date